Supreme Court U.S.
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No. 01-1818

In The Supreme Court of the United States

ANGEL SANTIAGO,

Petitioner,

v.

K-SIX TELEVISION, INC., et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Texas

BRIEF FOR THE RESPONDENTS IN OPPOSITION

JORGE C. RANGEL
Counsel of Record
WILLIAM E. MAXWELL
THE RANGEL LAW FIRM, P.C.
615 Upper N. Broadway,
Suite 2020
Corpus Christi, Texas 78477
(361) 883-8500

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether petitioner has properly invoked this Court's jurisdiction to pass on the constitutionality of a Texas statute when petitioner never presented the federal claims to any Texas state court for determination?

2. Whether the United States Constitution prohibits the State of Texas from enacting a civil statute that permits media defendants and individuals whose comments are published in the media to file an interlocutory appeal of the denial of a motion for summary judgment in a defamation action?

RULE 14.1 AND RULE 29.6 STATEMENT

The petition correctly lists the parties in the underlying appeal.

Pursuant to Supreme Court Rule 29.6, respondent K-Six Television, Inc. states that it has no parent company, and no publicly held company owns 10% or more of its stock. Pursuant to a stock purchase transaction in June, 2002, all of its stock was purchased by Eagle Creek Broadcasting, L.L.C.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
RULE 14.1 AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	2
CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

Adams v. Robertson, 520 U.S. 83 (1997).....3, 4, 5

Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987).....4, 5

Calder v. Jones, 465 U.S. 783 (1984).....5, 6, 7

Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985)..... 6

FCC v. Beach Communications, Inc., 508 U.S. 307 (1993)..... 6

K-Six Television, Inc. v. Santiago, 75 S.W.3d 91 (Tex. App.-San Antonio 2002, no pet.) 1

KTRK Television, Inc. v. Fowkes, 981 S.W.2d 779 (Tex. App.-Houston [1st Dist.] 1999, writ denied)..... 6

STATUTES

Texas Civil Practice & Remedies Code §51.014(a)(6).....1, 2, 4, 6

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Respondents K-Six Television, Inc., Devin Helmes, Amanda Salinas, Anahi Garcia, David Cortez, and Juan Zamora ("K-Six"), respectfully submit that the petition for certiorari should be denied. Respondents file this Brief in Opposition to comply with the obligation imposed by Supreme Court Rule 15.2.

STATEMENT OF THE CASE

This case arises out of a defamation claim that Petitioner filed against K-Six. The factual background is set forth in the opinion of the Texas Court of Appeals for the Fourth Judicial District. *See* Pet. App. C.; *K-Six Television, Inc. v. Santiago*, 75 S.W.3d 91 (Tex. App.-San Antonio 2002, no pet.).

1 Petitioner sued K-Six in Texas state court alleging that two news broadcasts had defamed him. K-Six moved for summary judgment pursuant to the Texas Rules of Civil Procedure. The trial court denied the motion for summary judgment. In accordance with Texas statutory law, K-Six filed an interlocutory appeal. Section 51.014(a)(6) of the Texas Civil Practice & Remedies Code permits such an appeal by a member of the electronic or print media, where the media relies upon a defense arising under the First Amendment to the U.S. Constitution, Article 1, Section 8 of the Texas Constitution, or general libel law as codified by Texas statutes. In his response to K-Six's appeal, Petitioner never asserted that section 51.014(a)(6) was violative of the United States Constitution. After full briefing on the merits and oral argument,

the Texas appellate court reversed the trial court and rendered judgment that Petitioner take nothing against K-Six. The appellate court subsequently denied Petitioner's motion for rehearing, which did not raise any issue challenging the constitutionality of the Texas interlocutory appeal provision.

Petitioner did not appeal the decision of the court of appeals. Instead, he filed a petition for writ of mandamus in the Texas Supreme Court seeking dismissal of K-Six's appeal on jurisdictional grounds. Pet. App. A. Petitioner based his mandamus action entirely on the argument that K-Six had not properly invoked the interlocutory appeal statute. The sole issue that Petitioner asked the Texas Supreme Court to resolve was whether the court of appeals "erroneously exercised appellate jurisdiction over an interlocutory appeal." *Id.* at vii. Petitioner's argument and authorities focused solely on the construction and application of the Texas statute. Petitioner never asserted that the Texas statute was unconstitutional. The Supreme Court of Texas denied the petition for writ of mandamus without opinion. Pet. App. B. The Petition before this Court complains solely of this action by the Texas Supreme Court. Pet. at 2.

REASONS FOR DENYING THE PETITION

Petitioner is challenging the constitutionality of a Texas statute without first allowing Texas courts to determine the issue. Petitioner ignores this Court's repeated admonishment that it will not review federal claims that have not been properly presented to the state court whose judgment is under review. By failing to raise

the constitutional argument below, Petitioner has deprived the State of Texas of the opportunity to review the constitutionality of its own legislative enactment. By raising the constitutional argument for the first time in this Court, Petitioner has presented to this Court materials that were not provided to the Texas court of appeals or to the Texas Supreme Court. The materials included in Petitioner's Appendix at Tabs H through L were not presented to *any* court in this process and cannot be considered a part of the record of this case.

Even if Petitioner's federal claims were properly before this Court, they are without merit. This Court has noted on several occasions that the First Amendment does not mandate special procedural protections for media defendants in defamation claims. However, it has never held that the First Amendment *precludes* states from enacting procedural rules that may inure to the benefit of media defendants. Likewise, Petitioner's Equal Protection claim misses the mark completely. Application of the rational basis test shows an enactment that is rationally related to a legitimate state purpose. At least one Texas court has rejected a similar challenge to the statute under state constitutional grounds, finding there is a reasonable basis to the classification in the statute. Accordingly, review should be denied.

1. This Court has often stated that it "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision" under review. *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (internal citations omitted). Petitioner's federal constitutional claims were neither addressed by, nor properly presented to, the Texas Supreme Court. His petition for writ of mandamus focused solely on

the interpretation and application of Texas Civil Practice & Remedies Code section 51.014 (a)(6), and whether K-Six had properly invoked appellate jurisdiction. In fact, he admits in his Petition to this Court that the mandamus proceeding "was based solely upon the improper exercise of jurisdiction by the appellate court." Pet. at 8. His prayer asked the Texas Supreme Court to instruct the court of appeals to dismiss the appeal for lack of jurisdiction, and remand the case for trial. Pet. App. A, at 15. Nowhere in his petition to the Texas Supreme Court did Petitioner identify, much less brief, the federal claims asserted in the Petition before this Court. As noted above, the Texas Supreme Court denied the request for mandamus relief without opinion.

"When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented." *Adams*, 520 U.S. at 86; *see also Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 549-50 (1987) ("When the highest state court has failed to pass on a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.") (internal quotations omitted). Thus, the silence of the Texas Supreme Court creates a presumption that the Petitioner can overcome only by demonstrating that the state court had fair opportunity to address the federal question at issue. In *Adams*, this Court noted some of the ways a petitioner could overcome this presumption: by showing that the federal claim was presented to the state court at the time and in the manner required by state law; that state procedural requirements could not serve as an independent and adequate state law ground for the state

court decision; or otherwise that he presented the claims in issue to the state court with "fair precision and in due time." *See Adams*, 520 U.S. at 87.

Petitioner cannot overcome this presumption. His passing references to federal authorities in his mandamus petition did not present a federal question for determination by the Texas Supreme Court. *See Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 549-50 (1987) (holding that the "casual reference to a federal case, in the midst of an unrelated argument, is insufficient to inform a state court that it has been presented with a claim subject to [Supreme Court] appellate jurisdiction under 28 U.S.C. §1257(2)"). Under either jurisdictional or prudential considerations, review should be denied.

2. Even if Petitioner were able to overcome the jurisdictional deficiencies in his petition, the federal claims he seeks to assert are completely without basis in law. Petitioner seems to be asserting that the United States Constitution prohibits states from affording procedural protections to defamation defendants. As legal authority for this broad conclusion, Petitioner cites *Calder v. Jones*, 465 U.S. 783 (1984). Petitioner misconstrues *Calder*. The issue in *Calder* was whether California courts could exercise personal jurisdiction over a Florida resident accused of publishing defamatory matter in California. The media defendant argued that its First Amendment protections should be taken into account in the jurisdictional analysis. This Court rejected this argument, noting that the infusion of First Amendment considerations "would needlessly complicate an already imprecise inquiry" into personal jurisdiction. *Id.* at 790. This Court further noted that the potential chilling effect on protected

First Amendment activity arising from defamation claims was adequately taken into account by restrictions on the substantive law governing such suits. *Id.*

As applied to the statute at issue in this case, the most that can be said of the rule announced in *Calder* is that the First Amendment might not require states to permit interlocutory appeals to media defendants in defamation cases. This is far different from the Constitution *prohibiting* a statute that permits such appeals. Petitioner cites no authority that would even suggest that the First Amendment precludes the states from enacting procedural rules such as Texas Civil Practice & Remedies Code section 51.014(a)(6).

Petitioner's claim that the Texas statute violates the Equal Protection Clause of the Fourteenth Amendment must also fail. Petitioner concedes that rational basis review is the appropriate test for his Equal Protection challenge. Pet. at 23. Under rational basis scrutiny, the enactment need only be rationally related to a conceivable and legitimate state end. *See, e.g., Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). The burden is upon the challenging party to negate "any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993).

Petitioner has not met this burden. The basis for the Texas interlocutory appeal statute has been articulated by Texas courts: "One rationale for the statute is to save the time and expense of a trial on the merits when the media may be entitled to a constitutional or statutory defense." *KTRK Television, Inc. v. Fowkes*, 981 S.W.2d 779, 784 (Tex. App.-Houston [1st Dist.] 1999, writ denied) (reviewing

statute under "reasonable basis" analysis and rejecting state constitutional challenge to classification). Petitioner appears to accept this rationale, arguing only that the rationale somehow violates the U.S. Constitution. He again mistakenly relies on the *Calder* case as authority for the proposition that the U.S. Constitution bars "special solicitude" for members of the media. Pet. at 23. Petitioner's arguments before this Court are without support in the law.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be denied.

Respectfully submitted,

JORGE C. RANGEL
Counsel of Record
WILLIAM E. MAXWELL
THE RANGEL LAW FIRM, P.C.
615 Upper N. Broadway, Suite 2020
Corpus Christi, Texas 78477
(361) 883-8500

Counsel for Respondents